

**BUREAU OF LAND MANAGEMENT  
GRANTS PASS INTERAGENCY OFFICE  
2164 NE SPALDING AVENUE  
GRANTS PASS, OREGON 97526**

**INDIAN HILL ROAD CONSTRUCTION AND RIGHT-OF-WAY  
DECISION RECORD**

**I. INTRODUCTION**

On July 21, 2009, Indian Hill LLC submitted a request to construct a road 1,337 feet in length and 45 feet in width across BLM land to access their tract of land and amend O&C Logging Right-of-Way and Road Use Agreement M-1166. In September 2010, the BLM completed the McMullin Road Construction Right-of-Way Environmental Assessment (EA # DOI-OR-M070-2010-007) in response to Indian Hill LLC's request. However, the BLM only analyzed for the construction of 1,200 feet of road 35 feet wide. The Indian Hill Road Construction and Right-of-Way EA (EA # DOI-BLM-OR-M070-2012-004) replaces the McMullin Road Construction Right-of-Way Environmental Assessment fully and analyzed the impacts of Indian Hill LLC's request to construct a road 1,337 feet in length and 45 feet in width. BLM proposes to amend Right-of-Way and Road Use Agreement M-1166 to include certain roads for hauling of forest products, construct the proposed road, and add 0.75 miles of existing Road 38-7-32A to the M-1166 Agreement.

The Indian Hill Road Construction and Right-of-Way EA and Finding of No Significant Impact (FONSI) were available for public comment from May 23, 2012 to June 21, 2012. The Grants Pass Field Manager is the decision maker in determining whether to approve or deny Indian Hill LLC's request to amend O&C Logging Right-of-Way and Road Use Agreement M-1166.

**II. PUBLIC INVOLVEMENT**

Planning for this project began in December 2009 when BLM mailed out approximately 45 scoping letters to adjacent landowners; to federal, state, and county agencies; and to tribal and private organizations and individuals that requested information concerning projects of this type.

The previous McMullin Road Construction and Right of Way EA was available for public review from September 9 through October 9, 2010. It incorporated analysis of the proposed actions and addressed issues raised in scoping comments. Letters were sent to individuals, landowners, groups and agencies that requested that they be kept informed of the project or owned land adjacent to the project. The letter and project maps provided a synopsis of the proposed actions, stated that the EA was available on line or from the Grants Pass Interagency Office, and announced the 30-day public comment period. A legal ad (Notice of Availability) was published in the Grants Pass Daily Courier on September 9, 2010. These previous comments were considered in the analysis for the Indian Hill Road Construction and Right-of-Way EA.

The BLM mailed a letter to parties that indicated interest in the proposed road on May 24, 2012. The BLM received one comment letter submitted by three organizations and one individual for the Indian Hill Road Construction and Right-of-Way EA on June 19, 2012. BLM's responses to these comments are attached.

### **III. DECISION**

I have selected Alternative 2 as analyzed under the Indian Hill Road Construction and Right-of-Way EA. Alternative 2 will amend Indian Hill LLC's reciprocal ROW to: a) use certain BLM roads for hauling of forest products, b) construct 1,337.3 feet (0.25 miles) of road across BLM lands (Appendix A, Map) and c) add 0.75 miles of existing Road 38-7-32A to the M-1166 Agreement.

The constructed road will be built across BLM lands in the NE corner of T39S, R7W, Section 5. The right-of-way would be 45 feet wide. Two culverts would be installed 1) an 18 inch CMP at intersection with Road 38-7-32A and 2) a 24 inch bottom lay culvert in a draw near the edge of BLM lands in Section 5. The road segment would be constructed at a maximum grade of 10%; would have a 17 foot wide subgrade width; a 14 foot running width; and a 2% outslope for drainage. Vegetation would be cleared the minimum amount necessary to provide visibility for safety. The road would be naturally surfaced.

Indian Hill LLC will be permitted to haul timber across existing roads 38-7-32A and the newly constructed road. Indian Hill LLC would renovate the existing road by surface blading, cleaning the ditches and culverts, and brushing roadsides as needed for safety and visibility. Road use would be restricted to dry periods except as noted in Section 2.3 of the EA, Project Design Features. The roads would also be used for access to conduct fuel hazard reduction, brush field conversion and pre-commercial thinning, although a ROW is not required for these activities.

### **IV. DECISION RATIONALE**

Based on recommendations from the planning team; the Finding of No Significant Impact; and careful consideration of the objectives of the laws, regulations, planning documents; and supported through the NEPA analysis governing these lands, the following constitutes my decision.

**Alternative 1**, the No Action Alternative, is rejected because it does not meet the management direction as outlined under the 1995 Medford District Record of Decision and Resource Management Plan to make lands available for needed right-of-ways. If Indian Hill LLC's request is denied, some portions of the haul route could be used but the proposed road segment under Alternative 2 would not be constructed. However, Indian Hill LLC has indicated that it is feasible to reconstruct the existing Road 39-7-5, currently under reciprocal right-of-way M-1166, to access their land. The reconstruction and use of Road 39-7-5 is a non-discretionary action and project design and effects are speculative. The road is located along a tributary of McMullin Creek. At least 2 culverts 36 inches in diameter would need to be installed. The road would need to be widened to accommodate logging traffic.

Road 39-7-5 follows very closely a main tributary of upper McMullin Creek. Portions of the road prism are nonexistent as channel movement has undercut and eroded the original road grade. Slumps from the cut bank onto the road have side slopes up to 85% from the top to the stream channel. Reconstruction would keep the road adjacent to the stream. The reconstruction footprint would be approximately 1700' long by 45' wide (1.76 acres). The route begins at the junction with road 38-7-31 with a steep 15% grade for 100' with evidence of erosion. This transitions into a narrow, down to 8', road with a 6% grade but the hill slope increases to 50%. This would need to be widened and a minimum 36" culvert installed. Moving up the road the road grade stays below 10% but the hill slope is between 60-85%. Reconstruction would require full bench construction. Slides have occurred where the road enters Indian Hill LLC owned lands requiring new construction and the installation of a minimum 48" culvert.

Under Alternative 1, the haul could potentially deliver large amounts of sediment and runoff directly to the creek because of general wear to the road surface and the future risk of the channel recreating the undercut. If Indian Hill LLC reconstructs Road 39-7-5 under the No Action Alternative, the anticipated effects from sediment runoff associated with road construction and maintenance would be expected to be measurable at the local scale on the fish bearing tributary and poses a potential chronic source of sediment input.

**Alternative 2**, the Proposed Action will achieve the objectives, direction, and law contained in the Medford RMP.

The Resource Management Plan (p. 82) directs the BLM to make lands available for needed right-of-ways. The BLM considered the potential effects of alternate access to Indian Hill LLC's tract and determined that the Proposed Action would have the least environmental impacts where the BLM has discretionary control.

## **V. FINDING OF NO SIGNIFIANT IMPACT**

One letter was received during the 30-day review period for the EA and FONSI. The letter did not provide new information, nor did they identify a flaw in assumptions, analysis, or data that would alter the environmental analysis disclosed in the EA or conclusions documented in the FONSI. It is my determination that the Selected Alternative will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition for significance in context or intensity as defined in 40 CFR § 1508.27. Therefore an environmental impact statement will not be prepared.

## **VI. CONSULTATION AND COORDINATION**

This project is not expected to affect long-term population viability of any Federally Threatened, Endangered, or Candidate botanical species (EA p. 22); this project is "no effect" to listed or proposed botanical species.

BLM consulted with the US Fish and Wildlife Service (USFWS) regarding project activities that may affect northern spotted owls. Pursuant to the Endangered Species Act (ESA), consultation

with the USFWS has been completed and a Letter of Concurrence Fall 09 FY10-11 (Tails #13420-2010-I-025) has been received from the USFWS. In terms of Consultation, the ROW construction “*may affect, but would not likely adversely affect*” (NLAA) spotted owls. No suitable nesting, roosting, or foraging (NRF) habitat would be removed.

The U.S. Fish and Wildlife Service issued a revised critical habitat proposal for the northern spotted owl on February 28, 2012 and is under a court-ordered deadline to finalize a revised critical habitat designation by November 15, 2012. This project contains no acres of critical habitat and no acres of proposed critical habitat for the northern spotted owl. The Endangered Species Act requires the BLM to consult with the U.S. Fish and Wildlife Service when a proposed project may affect critical habitat for a listed species and to conference when a project may adversely affect proposed critical habitat for a listed species

In accordance with section 7 of the ESA, the BLM analyzed project activities for their potential to affect Southern Oregon/Northern California (SONC) coho salmon or their designated critical habitat. The BLM also analyzed these activities for their potential to affect Essential Fish Habitat (EFH), in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). All actions in this decision are “no effect” for SONC, or for Essential Fish Habitat in accordance with the MSA.

Based on surveys, the project will not adversely impact any sites of cultural or historical significance. The State Historic Preservation Office (SHPO) was informed of the BLM’s finding in accordance with 36 CFR 800.5(b).

The Confederated Tribes of the Siletz and the Grande Ronde were notified of this project during scoping and the EA’s public comment period. Josephine County Commissioners and the Josephine County forestry department were also contacted. No responses were received. The following agencies were also consulted during the planning process: Josephine County, US Fish and Wildlife Service, and Oregon Department of Fish and Wildlife.

## **VII. PLAN CONFORMANCE**

Based on the information in the Indian Hill Road Construction and Right of Way EA, FONSI, and in the record, I conclude that this decision is consistent with the:

- *Final EIS/ROD for the Medford District Resource Management Plan (RMP) (1995)*
- *Final Supplemental Environmental Impact Statement and Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (Northwest Forest Plan FSEIS 1994 and ROD 1994);*
- *Final SEIS for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (2000), and the ROD and Standards and Guidelines for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (2001)*

- *Final Supplemental Environmental Impact Statement: Management of Port-Orford-Cedar in Southwest Oregon (FSEIS 2004 and ROD 2004);*
- *Medford District Integrated Weed Management Plan Environmental Assessment (1998) and tiered to the Northwest Area Noxious Weed Control Program (EIS 1985).*

This decision is also consistent with the Endangered Species Act; the Native American Religious Freedom Act; other cultural resource management laws and regulations; Executive Order 12898 regarding Environmental Justice; and Executive Order 13212 regarding potential adverse impacts to energy development, production, supply and/or distribution. This decision will not have any adverse impacts to energy development, production, supply and/or distribution (per Executive Order 13212). This document complies with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA; 40 CFR Parts 1500-1508) and the Department of the Interior's regulations on the National Environmental Policy Act of 1969 (43 CFR Part 46) as well as the BLM specific NEPA requirements in the Departmental Manual (516 DM 11).

The ACS Consistency Review completed for this project found that the project is in compliance with the Aquatic Conservation Strategy as originally developed under the Northwest Forest Plan (EA pp. 18-21).

## **VIII. ADMINISTRATIVE REMEDIES**

### **EFFECTIVE DATE OF DECISION**

This is a land decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2812. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after the date of service) where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b).

### **RIGHT OF APPEAL**

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a "party to the case." (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after the date of service. Only signed hard copies of a notice of appeal that are delivered to:

**BUREAU OF LAND MANAGEMENT**  
**GRANTS PASS INTERAGENCY OFFICE**  
 2164 NE Spalding  
 Grants Pass, OR 97526

will be accepted. Faxed or e-mailed appeals will not be considered.

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor and Indian Hill LLC, and the Association of O&C Counties at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The Board will review any petition for a stay and may grant or deny the stay. If the Board takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until the Board makes a final ruling on the case.

## **HOW TO FILE AN APPEAL**

See the attached Form 1842-1 for complete instructions on Filing an Appeal

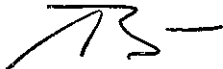
## **IX. CONTACT PERSON**

For additional information contact:

Allen Bollschweiler, Grants Pass Field Manager,  
Bureau of Land Management  
2164 NE Spalding Avenue, Grants Pass, OR 97526  
541-471-6653  
or Martin Lew (Grants Pass Resource Area Environmental Planner) at, 541-471-6504.

Additional addresses to serve documents include:

- USDI, Office of Hearings and Appeals, IBLA  
801 N. Quincy Street, MS 300-QC  
Arlington, Virginia 22203
- Regional Solicitor  
Pacific Northwest Region  
U.S. Department of the Interior  
805 S.W. Broadway, Suite 600  
Portland, Oregon 97205
- Indian Hill, LLC  
200 Corporate Way  
Grants Pass, OR 97526



Allen Bollschweiler  
Field Manager, Grants Pass Resource Area  
Medford District, Bureau of Land Management

8/9/12

Date

## **BLM RESPONSE to PUBLIC COMMENT**

### **Indian Hill Road Construction and Right-of-Way**

The Indian Hill Road Construction and Right-of-Way EA and Finding of No Significant Impact (FONSI) were available for public comment from May 23, 2012 to June 21, 2012. Notification of the comment period was included in publication of a legal notice in the Daily Courier, newspaper of Grants Pass, Oregon on May 23, 2012; the Medford District Bureau of Land Management website at <http://www.blm.gov/or/districts/medford/index.php>; and in a letter mailed to those individuals, organizations, and agencies that indicated interest in this project. The BLM received one comment letter that was submitted by three organizations and one individual on June 19, 2012

Substantive comments do one or more of the following (H -1790-1, National Environmental Policy Handbook):

- question, with reasonable basis, the accuracy of information
- question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis
- present new information relevant to the analysis
- present reasonable alternatives
- cause changes or revisions in one or more alternative

Comments that are not considered substantive include the following:

- comments in favor of or against the proposed action or alternatives without reasoning that meet the criteria listed above (such as “we disagree with Alternative Two and believe the BLM should select Alternative Three)
- comments that only agree or disagree with BLM policy or resource decisions without justification or supporting data that meet the criteria listed above (such as “more grazing should be permitted”).
- comments that don’t pertain to the Project Area or the project (such as “the government should eliminate all dams,” when the project is about a grazing permit)
- comments that take the form of vague, open-ended questions

For comments that were identical or very similar, they were combined and a single response was made. The Code of Federal Regulations (40 CFR §1503.4) identifies five possible types of responses for use with environmental impact statements.

- modifying one or more of the alternatives as suggested
- developing and evaluating suggested alternatives
- supplementing, improving, or modifying the analysis



- making factual corrections
  - explaining why the comments do not warrant further agency response, citing cases, authorities or reasons to support the BLM's position
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**Comment 1: Reasonable Access already exists.**

**Response:** The BLM clearly states in the Purpose and Need and Conformance sections that the BLM will meet the following objectives of the Medford Resource Management Plan:

- Continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon statewide planning goals and rules, and the exclusion and avoidance areas identified in this RMP (p.82).
- Consider new locations for rights-of-way projects on a case-by-case basis. Applications may be approved where the applicant can demonstrate that use of an existing route or corridor would not be technically or economically feasible; and the proposed project would otherwise be consistent with this resource management plan and would minimize damage to the environment (RMP, p.83).
- Develop and maintain a transportation system that serves the needs of users in an environmentally sound manner (RMP, p.84).

The BLM considered whether Indian Hill, LLC had alternate access to reach the southwestern half of their land to harvest timber. The commenter has taken portions of the EA out of context in claiming that Indian Hill, LLC has existing access to the southwestern half of their land. It is unreasonable for the commenter to rely on two dimensional satellite photography to conclude that Indian Hill, LLC can feasibly construct roads on their own land to access the west half of section 4.

BLM is not obligated to analyze effects on private lands if the landowner has other access and therefore not considered and inter-related or interdependent action. Indian Hill, LLC has non-discretionary access under an existing ROW and the BLM considered the environmental effects if BLM denied their new road construction. The EA states on page 8 that :

Access through private lands is not within BLM's control. Also existing reciprocal right-of-way agreements Indian Hill LLC has through BLM lands to access their land is non-discretionary and not under BLM control. If BLM denies Indian Hill LLC's request, it is feasible for Indian Hill LLC to reconstruct and use the existing 1,700 foot Road 39-7-5, currently under reciprocal right-of-way M-1166, to access their land. The reconstruction and use of Road 39-7-5 is a non-discretionary action. Therefore, project design of the road would be speculative and effects will be discussed qualitatively in the EA.

The commenter failed to acknowledge the full paragraph they cite that while “There are existing access roads to the Indian Hill LLC parcel from the east. Indian Hill LLC has improved the existing roads and they are using them to access other portions of their land. Due to the terrain, it is infeasible to access this parcel.

Helicopters could also be used for logging; however, while a viable option, this would not allow Indian Hill, LLC access for fuel hazard reduction, brush field conversion and pre-commercial thinning. Therefore, this option was not analyzed further.

The map provided in the EA clearly shows numerous streams and steep terrain between existing Indian Hill LLC roads and their intended parcel of land to harvest. The commenter has not proposed a reasonable alternative action that the BLM has failed to consider. If the BLM denies the Proposed Action, Indian Hill LLC can access their parcel but with higher risks of erosion, sedimentation and harm to fish.

#### **Comment 2: The No Action Alternative.**

**Response:** The commenter has not identified another feasible alternative other than objecting to road building on BLM lands.

The commenter is aware of the Seneca lawsuit and brought up the same comment regarding road widths. A 40-60 ft clearing width is standard for this type of road and topographical features present at this site. The clearing width area exceeds the useable road width and includes ditches, curve widening, and vegetative removal beyond ditches. The commenter does not agree that road widths are not a one-width-fits-all conditions or needs.

#### **Comment 3: O&C Act.**

**Response:** The Medford RMP clearly states that “The management of the O & C lands is governed by a variety of statutes, including the O & C Lands Act, Federal Land Policy and Management Act (FLPMA), the Endangered Species Act (ESA), and the Clean Water Act.” The Indian Hill Road Construction and Right-of-Way EA is consistent with the variety of statutes as directed under the RMP.

The commenter appears to have concerns with the Medford RMP which the Indian Hill Road Construction and Right-of-Way EA conforms to. The EA states that “The project lies within the Deer Creek 5th field watershed (72,679 acres). BLM manages 29,924 acres (41%) within the Deer Creek Watershed” (p.12). As stated on page 1 of the EA, “The Proposed Action would add approximately 1.4 acres of road surface in the 6th field HUC. Given the small addition, roaded acres in the subwatershed would essentially remain at 3%, which is below the level that research has detected measurable changes to streamflow.”

#### **Comment 4: Watershed Analysis.**

**Response:** The actions proposed are consistent with the recommendations of the Watershed Analysis. This project is consistent with the recommendations. As stated on page 19 of the EA:

The actions proposed in the Indian Hill Road Construction and Right-of-Way Project EA occur entirely within the Deer Creek 5<sup>th</sup> field watershed, analyzed in the Deer Creek Watershed Analysis (USDI 1997). The actions proposed are consistent with the recommendations of the Watershed Analysis, such as maintaining water quality in McMullin Creek through correct road maintenance and design (WA, p. 102). The Watershed Analysis recommends that roads built across streams be constructed in a manner to minimize sediment production and maintain riparian habitat (WA, p. 100).

The Indian Hill Road Construction and Right-of-Way EA is not a restoration project. The Watershed Analysis was done on a landscape basis and not all projects will meet all recommendations. For instance, closing and decommissioning roads is not the objective for this project as stated in the purpose and need. The proposed project is consistent with recommendations of the Deer Creek Watershed Analysis. The commenter has not identified how approximately 1.4 acres of road surface leads to any additional effects analyzed under the EA.

**Comment 5: Does Indian Hill Possess a Clean Water Act Permit**

**Response:** The Indian Hill Road Construction and Right-of-Way EA (9-10) includes Best Management Practices (BMPs) and Project Design Features (PDFs), with the intention to minimize or prevent sediment delivery to streams in compliance with the Clean Water Act of 1972 and its revisions to the maximum extent practicable.

The EA analyzed potential effects from road construction and determined:

If subsurface water were exposed at the surface and flowing over uncovered soil due to road construction, runoff may transport fine sediment off-site. However, this is highly unlikely because new road construction would occur on a convex slope on the upper half of the ridge where exposed subsurface water is not generally adequate to create free water surface flow across a road. In addition, PDFs minimizing wet season operations, seeding and straw mulching bare soil road slopes, and armoring of culvert outlets would greatly limit subsequent sediment transport. Further, the new road's drainage design, placement of rock, and windrowed slash below the road would limit road related overland water flow and capture any routed sediment. Due to these multiple design features, chances of sediment from road construction reaching the mainstem McMullin Creek, over a quarter mile downslope from the road, are very unlikely. Therefore, there would be no change to McMullin Creek's sediment regime that would be due to this new road construction.

As determined on page 17 of the EA:

Given the small addition, roaded acres in the subwatershed would essentially remain at 3%, which is below the level that research has detected measurable changes to streamflow. Under the Proposed Action there would be disturbance caused by log

hauling and road renovation. Since there are six small tributary stream haul road crossings, there would likely be a small amount of fine sediment that would reach McMullin Creek however it would not likely be transported any more than 100 feet downstream from where affected tributaries meet McMullin Creek

In conclusion, due to these multiple design features, chances of sediment from road construction reaching the mainstem McMullin Creek, over a quarter mile downslope from the road, are very unlikely.

#### **Comment 6: Cumulative Impacts**

**Response:** Cumulative effects were analyzed at an appropriate scale for each resource. Some resources address cumulative effects on the 5<sup>th</sup> field or 6<sup>th</sup> field watershed level because effects are usually not discernable at analysis areas larger than this. Other resources address effects at additional scales as appropriate to that resource. The EA did not identify any cumulative effects at the project level. The EA addressed the level of harvest within the Deer Creek watershed, disclosing that BLM projects will commercial harvest on approximately 378 acres across the 72,769 acre Deer Creek watershed (p. 12). Note that effects from other past, present and reasonably foreseeable actions within the watershed area included in the Affected Environment for each resource. As stated in the EA (p. 11):

Information on the current environmental condition is comprehensive and more accurate for establishing a baseline condition for a cumulative effects analysis than attempting to establish such a starting point by adding up the effects of individual past actions. This would provide a list of effects without addressing the changes or improvement in conditions since the action originally occurred; unlike current conditions, past actions and perceived effects can no longer be verified by direct examination.

Therefore, the affected environment and No Action effects section for each resource incorporates the current condition, and past present and reasonably foreseeable actions. Following the Code of Federal Regulations and CEQ guidance, the effects sections add the anticipated effects of this project to the current conditions, resulting in the cumulative effects analysis for the project.

The commenter lists a litany of resources they want analyzed but fail to specify how 1.4 of new road construction within a 72,769 acre watershed would have cumulative effects to migratory birds, late successional forests, fuel loading, fire hazard and human health, etc. The Interior Board of Land Appeals (IBLA 2012-72) ruled that "In assessing the adequacy of an EA, we will generally be guided by the 'rule of reason,' such that the EA need only briefly discuss the likely impacts of a proposed action: 'By nature, it is intended to be an overview of environmental concerns, not an exhaustive study of all environmental issues which the project raises.'" *Bales Ranch, Inc.*, 151 IBLA 353, 358 (2000) (quoting *Don't Ruin our park v. Stone*, 802 F Supp. 1239, 1247 (M.D. Pa. 1992)).

### **Comment 7: Range of Alternatives**

**Response:** The range of alternatives considered in an EA is largely dependent on the purpose and need for the project. The purpose and need for the action is to make lands available for needed ROWs (RMP P.82). The EA analyzed two action alternatives including an alternative to grant the ROW and a No Action alternative. The Interdisciplinary Team examined the option for Indian Hill LLC to access the SW corner of their parcel through road construction across steep slopes on their land; this was not analyzed in detail because the proposed road construction across BLM land crosses less steep land and is a more feasible option. The team also examined access via other private and BLM roads and found the access proposed by Indian Hill LLC to be the most ecologically sound way to access the SW corner of their parcel of land. Helicopters were considered for logging; however, while a viable option, this would not allow Indian Hill LLC access for fuel hazard reduction, brush field conversion and precommercial thinning. Therefore, this option was not analyzed further (EA p.4). Similarly, temporary road construction would not allow access for future vegetation management needs.

The EA found that the No Action Alternative would create greater negative cumulative soil and hydrology impacts than the Proposed Action Alternative. The EA analyzed the potential direct, indirect, and cumulative impacts of the alternatives to soils, water quality, and wildlife habitat associated with the proposed road construction. Other Alternatives were considered but not analyzed further because they had greater negative impacts.

The commenter fails to offer a specific alternative that is cost effective and meets the Purpose and Need, and is significantly different than the Proposed or No Action alternative already analyzed in the EA.

The National Environmental Policy Act (NEPA) directs federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources, *Oregon Natural Desert Association v. Singleton*, 47 F.Supp.2d 1182, 1194 (D.OR. 1998). Parties claiming a NEPA violation involving failure to consider a reasonable alternative must offer a specific, detailed counterproposal that has a chance of success. In the *Morongo Band of Mission Indians v. Federal Aviation Admin.*, parties claiming a NEPA violation involving failure to consider a reasonable alternative must offer a specific, detailed counterproposal that has a chance of success. Also in other cases it was determined that an agency does not have to consider alternatives that are not feasible, *Headwaters, Inc.*, 914 F.2d at 1180-1181 and an agency does not have to consider alternatives that would not accomplish the purpose of the proposed project, *City of Angoon v. Hodel* 803 F.2d 1016, 1021 (9<sup>th</sup> Cir 1986).

### **Comment 8: Road Width**

**Response:** Thee BLM commented to this same point in # 2 above by stating: The commenter has not identified another feasible alternative other than objecting to road building on BLM lands.

The commenter is aware of the Seneca lawsuit and brought up the same comment regarding road widths. A 40-60 ft clearing width is standard for this type of road and topographical features present at this site. The clearing width area exceeds the useable road width and includes ditches, curve widening, and vegetative removal beyond ditches. The commenter does not agree that road widths are not a one-width-fits-all conditions or needs. It appears the commenter has misinformation or misunderstood descriptions of a temporary and permanent road. Temporary roads have different engineering standards, as the life of the road is typically limited to one or two years of use followed by decommissioning.

The commenter has not identified how 1,337 feet of new road construction would require an EIS. The BLM determined in its Finding of No Significant Impact (EA, p. 1) that:

Based upon review of the Indian Hill Road Construction and Right-of-Way Project EA (Environmental Assessment # DOI-BLM-OR-M070-2012-004-EA) and supporting project record, I have determined that Alternative 2 (Proposed Action) is not a major federal action and would not have any significant effects beyond those described in the broader analyses conducted and disclosed in the environmental impact statements for the Medford District Resource Management Plan and the Northwest Forest Plan, or the effects have been determined to be insignificant.

The commenter has not identified an error in the FONSI of the Indian Hill LLC proposal.

**Comment 9: Noxious weeds**

**Response::** The BLM acknowledges (EA, p. 30) that ongoing activities such as motor vehicle traffic, recreation use, development, timber harvest, and road construction would result in new disturbed sites available for colonization by existing noxious weed populations, and they offer the possibility of introduction of new noxious weed species under any alternative, including the No Action alternative. Noxious weed sites have not been found within the Planning Area. Project design features have been put in place to eliminate any potential impacts that noxious weeds would have from any action that may occur from this project.

**Comment 10: Road density**

**Response::** The proposed action will add approximately 1.4 acres of road surface in the 6th field HUC. Given the small addition, roaded acres in the subwatershed will essentially remain at 3%, which is below the level that research has detected measurable changes to streamflow (EA p.17).

**Comment 11: Aquatic Conservation Strategy**

**Response:** The EA analyzed for compliance with Aquatic Conservation Objectives on pages 18-21. Based on the review of project effects at both the site and watershed scales and the nine ACS objectives, the Indian Hill Road Construction and Right-of-Way Project is consistent with the Aquatic Conservation Strategy (RMP EIS p. 2-5). The commenter has not identified how the analysis did not take a hard look.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF  
APPEAL.....

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL.....

US Department of the Interior, Bureau of Land Management  
Grants Pass Interagency Office  
2164 NE Spalding  
Grants Pass, OR 97526

WITH COPY TO  
SOLICITOR.....

Regional Solicitor, Pacific Northwest Region  
U.S. Department of the Interior  
805 S.W. Broadway, Suite 600  
Portland, OR 97205

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO  
SOLICITOR.....

Regional Solicitor, Pacific Northwest Region  
U.S. Department of the Interior  
805 S.W. Broadway, Suite 600  
Portland, OR 97205

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

**Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.